

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In re Application of)	
)	
Centerville City Schools Board of Education)	NAL/Acct. No. MB-200741410131
)	Facility I.D. No. 9780
For Renewal of License for)	FRN: 0003735529
Station WCWT-FM)	File No. BRED-20060619ACK
Centerville, Ohio)	

FORFEITURE ORDER

Adopted: April 20, 2010

Released: April 21, 2010

By the Chief, Audio Division, Media Bureau:

I. INTRODUCTION

1. In this Forfeiture Order (“Order”), we issue a monetary forfeiture in the amount of five hundred dollars (\$500) to Centerville City Schools Board of Education (“Centerville”), licensee of Class D Station WCWT-FM, Centerville, Ohio (“Station”), for willfully violating Section 73.3539 of the Commission’s Rules (“Rules”) by failing to timely file a license renewal application for the Station and for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended (“Act”), by engaging in unauthorized operation of the Station after its license had expired.¹

II. BACKGROUND

2. On February 8, 2007, the Media Bureau (“Bureau”) issued a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of seven thousand dollars (\$7,000) to Centerville for these violations.² Centerville filed a Response of Centerville City Schools Board of Education to Notice of Apparent Liability for Forfeiture (“Response”) on March 19, 2007.

3. As noted in the NAL, Centerville’s renewal application for the current Station license term should have been filed on June 1, 2004, four months prior to the October 1, 2004, expiration date, but was not.³ Accordingly, on June 13, 2006, the staff wrote to Centerville indicating that the Station’s license had expired and that (1) all authority to operate the Station was terminated; and (2) the Station’s call letters were deleted from the Commissions database. Centerville was advised that any further operation of the Station was unauthorized and must cease immediately.⁴ Upon receipt of the letter, on June 19, 2006, Centerville tendered both the captioned license renewal application and a request for temporary authorization (“STA”) to continue Station operations.⁵ The staff granted the STA Request on

¹ 47 C.F.R. § 73.3539; 47 U.S.C. § 301.

² *Centerville City Schools Board of Education*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 2390 (MB 2007). The Commission granted the above-referenced license renewal application on February 8, 2007.

³ See 47 C.F.R. §§ 73.1020, 73.3539(a).

⁴ See *Letter to Centerville City Schools Board of Education*, Ref. 1800B3-JDB (Chief, Audio Division, Media Bureau, Jun. 13, 2006).

⁵ See File No. BSTA- 20060619ACM (“STA Request”).

January 26, 2007.⁶ Centerville did not provide an explanation for its untimely filing of the renewal application. On February 8, 2007, the staff advised Centerville of its apparent liability for a forfeiture of \$7,000 for its failure to timely file the Station's renewal application and for unauthorized operation of the Station. In response, Centerville filed the subject Request.

4. In its Request, Centerville states that: (1) the late filing was unintentional and attributed to its staff's unfamiliarity with the filing process; and (2) the Station is a Class D, student-run station that provides a unique service to the community. Centerville asserts that these reasons warrant a cancellation or reduction of the assessed forfeiture.

III. DISCUSSION

5. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Act,⁷ Section 1.80 of the Rules,⁸ and the Commission's *Forfeiture Policy Statement*.⁹ In assessing forfeitures, Section 503(b)(2)(E) of the Act requires that we take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.¹⁰

6. Centerville does not dispute that it failed to file a timely renewal application for the Station or that it engaged in unauthorized operation of the Station, but states that these violations were unintentional. Centerville explains that Mr. Bob Romond, a faculty member who handled the Station's license renewal application, had not previously been involved in the license renewal process, nor had he any prior experience with the Commission's online filing system, known as CDBS. Mr. Romond apparently began filing the application on May 16, 2004, "'validated' the application in CDBS on that day, and mistakenly assumed . . . that the [Station's] renewal application had been filed"¹¹ Centerville was not aware that Mr. Romond had not completed the renewal application until it received the June 13, 2006 letter from the Bureau.¹²

7. As the Commission has held, however, violations resulting from inadvertent error or failure to become familiar with the FCC's requirements are willful violations.¹³ In the context of a forfeiture action, "willful" does not require a finding that the rule violation was intentional. Rather, the term "willful" means that the violator knew that it was taking (or in this case, not taking) the action in question, irrespective of any intent to violate the Rules.¹⁴ While we understand that Centerville's staff

⁶ Letter to Centerville City Schools Board of Education, Ref. 1800B3 (Jan. 26, 2007).

⁷ 47 U.S.C. § 503(b).

⁸ 47 C.F.R. § 1.80.

⁹ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

¹⁰ 47 U.S.C. § 503(b)(2)(E).

¹¹ Request at 3.

¹² *Id.*

¹³ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) ("*Southern California*") (stating that "inadvertence . . . is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance"); *Standard Communications Corp.*, Memorandum Opinion and Order, 1 FCC Rcd 358, 358 (1986) (stating that "employee acts or omissions, such as clerical errors in failing to file required forms, do not excuse violations").

¹⁴ See *Five Star Parking d/b/a Five Star Taxi Dispatch*, Forfeiture Order, 23 FCC Rcd 2649, 2651 (EB 2008) (declining to reduce or cancel forfeiture for late-filed renewal based on licensee's administrative error); *Southern California*, 6 FCC Rcd at 4387. See also *Domtar Industries, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 13811, 13815 (EB 2006) ("ignorance of or unfamiliarity with the Commission's requirements is not a

was unfamiliar with the online renewal process, Centerville, as the licensee, was ultimately responsible for ensuring it complied with the Commission's Rules by filing a timely renewal application.¹⁵

8. Centerville argues the forfeiture should be reduced or cancelled because the Station is a Class D student-run station that serves as a "local broadcast source for . . . news and local service."¹⁶ Class D stations are "secondary" services, which "primary" stations are not required to protect.¹⁷ Given the Commission's recent precedent assessing forfeitures in the amount of \$500 against licensees of secondary services for violations of Section 73.3539 of the Rules and Section 301 of the Act,¹⁸ we will reduce the forfeiture amount *sua sponte* to \$500 based on the Station's status as a Class D station.

9. We have considered Centerville's response to the NAL in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Centerville willfully¹⁹ violated Section 73.3539 of the Rules and willfully and repeatedly²⁰ violated Section 301 of the Act.²¹ However, as described above, we reduce the forfeiture amount to \$500.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.283 and 1.80 of the Commission's Rules,²² that Centerville City Schools Board of Education SHALL FORFEIT to the United States the sum of five hundred dollars (\$500) for willfully violating Section 73.3539 of the Commission's Rules and for willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended.

11. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's Rules within 30 days of the release of this Forfeiture Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant

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mitigating factor and does not warrant a forfeiture reduction"); *National Weather Networks, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 3922, 3925 (EB 2006) ("negligence does not mitigate a Commission rule violation").

¹⁵ See, e.g., *Educational Media Foundation*, Letter, 23 FCC Rcd 15366 (MB 2008) (citing *Request for Waiver by Center City School*, Order, 17 FCC Rcd 22424, 22426 (WCB 2002) ("it is the applicant who has responsibility ultimately for the timely submission of its application.")). See also *Bible Broadcast Church School*, Forfeiture Order, DA 10-344 (MB rel. Feb. 26, 2010) (issuing a forfeiture order for violating Section 73.3539 of the Rules where licensee created its application, but failed to complete the filing process by hitting the "File Form" button.).

¹⁶ Request at 1, 4.

¹⁷ 47 C.F.R. § 73.512(d).

¹⁸ See *School District of Haverford Township*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 2896, 2989 (MB 2008) (issuing NAL in the amount of \$500 for Class D station licensee's failure to timely file a license renewal application and for unauthorized operation of its station).

¹⁹ Section 312(f)(1) of the Act defines "willful" as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to Sections 312 and 503(b) of the Act, H.R. REP. NO. 97-765, 51 (Conf. Rep.), and the Commission has so interpreted the terms in the Section 503(b) context. See *Southern California*, 6 FCC Rcd at 4387-88.

²⁰ Section 312(f)(1) of the Act defines "repeated" as "the commission or omission of [any] act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(1). See also *Southern California*, 6 FCC Rcd at 4388 (applying this definition of repeated to Sections 312 and 503(b) of the Act).

²¹ 47 U.S.C. § 301.

²² 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

to Section 504(a) of the Act.²³ Payment of the proposed forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced in the caption above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank—Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank: TREAS NYC, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. If completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code).²⁴ Licensee will also send electronic notification on the date said payment is made to Kelly.Donohue@fcc.gov and Alexander.Sanjenis@fcc.gov. Requests for payment of the full amount of the forfeiture under an installment plan should be sent to: Associate Managing Director-Financial Operations, Room 1-A625, 445 12th Street, S.W., Washington, D.C. 20554.²⁵

12. IT IS FURTHER ORDERED, that a copy of this Forfeiture Order shall be sent by Certified Mail Return, Receipt Requested, and by First Class Mail, to Centerville City Schools Board of Education, c/o Mr. Bob Romond, 111 Virginia Avenue, Centerville, Ohio 45458 and its counsel, Alan C. Campbell, Esq., Fletcher, Heald & Hildreth, PLC, 1300 North 17th Street, 11th Floor, Arlington, VA 22209.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

²³ 47 U.S.C. § 504(a).

²⁴ See 47 C.F.R. § 1.1914.

²⁵ *Id.*